IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 110 OF 2005

SHRI VISHRAM S.P.NACHINOLKAR,SANTA-CRUZ,GOA. ....Applicants

Versus

THE STATE THROUGH THE PUBLIC PROSECUTOR AND 2 ORS., ...Respondents

Shri Abhay Nachinolkar, Advocate For The Applicant.

Coram:- V.M. KANADE, J.

Date:- 29th June, 2005

P.C.:

Heard learned counsel for the Applicant.

The applicant is challenging the Order passed by the Executive Magistrate, who has served a Notice under Section 133 of the Code of Criminal Procedure. A complaint was filed by the Principal of a School before the Executive Magistrate, in which a grievance was made that a coconut tree which was owned by the Applicant was likely to endanger the lives of the children who were studying in the School. The Executive Magistrate passed a conditional order as required under the provisions of Section 133 of Cr.P.C. and issued notice to the Respondent No.3 Shri Shital S.P. Nachinolkar to appear before the Executive Magistrate. The said Nachinolkar appeared before the Magistrate & stated that the applicant herein was one of the co-owners of the property. The Executive Magistrate therefore directed that a Notice should be served on the present applicant. After the notice was served the present applicant challenged the said notice by filing a revision application in the Sessions Court on the ground that the conditional order was not served on him and therefore the Notice was liable to be quashed.

The Sessions Court, in its Order dated 6th May, 2005 has held that though initially the conditional order passed by the Executive Magistrate was not served on the present applicant, subsequently the Executive Magistrate rectified the mistake and directed the Office to serve a copy of the conditional order on the present applicant. The Sessions Court, therefore, rejected the said application.

Against the said order, the applicant has preferred this Criminal Misc. Application. It is submitted by the learned counsel appearing for the Applicant, that the conditional order has not been served on the applicant and therefore he is not in a position to file his reply. He submitted therefore that the notice served on him is liable to be quashed and set aside.

I am unable to accept the submission made by the learned counsel for the applicant. The Sessions Judge has observed that the Executive Magistrate has rectified its earlier mistake and has directed his office to serve a copy of the conditional order on the applicant. In view of this specific finding, it is obvious that the conditional order is being served on the applicant and therefore there is no reason to interfere with the judgment and order passed by the Sessions Court in Criminal Revision Application No. 87/2004.

Criminal Misc. Application is therefore dismissed.

V.M. KANADE, J.